

IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF ALABAMA, EASTERN , DIVISION

HON. VANZETTA PENN MCPHERSON AT

DATE COMMENCED: 6/5/06 AT

DATE COMPLETED: 6/6/06 AT

William Earl Windham *
Gwendolyn Joyce Windham *

VS. * CIVIL CASE NO. 3:05cv472-VPM

B.W. Capps & Sons, Inc. *
*

PLAINTIFF APPEARANCES: DEFENDANT

James A. Balli

James Robert McKoon, Jr.

*

COURT OFFICIALS PRESENT:

COURTROOM DEPUTY: Wanda A. Robinson

COURT REPORTER: Mitchell Reisner

JURORS:

1. Sharon Gail Robinson

7. Meredith Joy Sheppard

2. Christy Smith Moore

8. Vera Robinson Sanders

3. Sharon Loretta Tartaglia

9. Claudette W. Tennant

4. John Charles Wild

10. Judy Nix Boone

5. Dawn Nichol Bordeaux

11. Linda C. Marbury

6. Colleen Frances Murphy

12. Juliet Taylor Rumble

I HEREBY CERTIFY THAT THE

ABOVE-NAMED JURORS SERVED

IN THIS CASE ON 6/5/06 + 6/6/06


COURTROOM DEPUTY

COURTROOM PROCEEDINGS:

- 10:00 Court Convened 6/5/06
Voor Dire Commenced; Jury Selection; Jury Sworn
- 10:45 Jury Selection Concluded
Court Give Instructions to the Jury
- 11:00 Opening Statement - Plaintiff
- 11:15 Court Recess 10 Minutes due to Juror's Illness
- 11:25 Plaintiff Invokes the Rule; Witnesses excused to the Witness Room until testimony
- 11:30 Defendant's Opening Statement
- 11:50 Recess for Lunch until 1:00 p.m.
- 1:00 Plaintiff's Exhibits 1 - 18 with the exclusion of #6 admitted; Plaintiff's exhibit #6 and Defendant's #12 are the same; Defendant's Exhibits 1-13 admitted
Witness Larry Barnett testifies
Defendant Cross Examines Witness Larry Barnett
Witness Excused
- 1:40 Exhibit #17 Deposition of William Michael Burnham read into the record by Attorney Balli responses by Joshua McKoon.
- 1:55 Exhibit #18 Christopher Joey McNair's testimony read into evidence; responses by J. McKoon
- 2:10 Witness James Norris testifies
Defendant cross-examines witness
Witness excused
- 2:20 Witness Randy Lynn Witness testifies
Defendant Cross-examines
Plaintiff Re-Directs witness
Witness excused
- 2:30 Witness George Wesley Capps
Defendant Cross-examines witness
Plaintiff Re-Directs
- 2:40 Court in Recess until 2:55
- 3:05 Witness Roy Hatton Witness testifies
Defendant Cross-examines

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Plaintiff Re-Directs
Witness excused

3:15 Plaintiff William Windham testifies

3:20 Issue discussed outside Jury's Presence Regarding testimony of Mr. Windham's background ;
Court will allow testimony as to where he graduated from college served from Viet Nam, but no
other background testimony unless plaintiff's credibility attacked

3:25 Jury Returned; Mr. Windham continues testimony
Defendant Cross-examines
Plaintiff Re-Directs
Defense again questions Mr. Windham
Witness Excused

4:50 Dr. Thomas Bernard's testimony read into the record, Exhibit #16; Responses read by
Gwendolyn Windham

5:25 Court recessed until 9:00 a.m. on 5/6/06

9:00 Court reconvened on 6/6/06

Court reviews stipulations by both plaintiff and defendant outside jury presence;
Stipulations accepted; Plaintiff may read into the record his stipulation after the completion of
Plaintiffs' evidence; defendant may read his stipulations after the completion of defendant's
evidence

9:05 Witness Gwendolyn Windham testifies
Defendant Cross-examines
Witness excused

9:25 Court explains to the jury stipulations, which will be presented as evidence

9:30 Plaintiff reads 2 stipulation facts into the record
Plaintiff rests

9:30 Defense does not have any witnesses
Jury Excused; Before defense evidence is presented, Defense makes ORAL MOTION for Directed
Verdict; Plaintiff's makes ORAL RESPONSE TO MOTION

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9:35 Court's Requests further argument as to claims
Plaintiff responds
Defendant replies to plaintiff responds
Plaintiff further responds

9:45 Court recess for review of transcript

10:15 Court Reconvenes; Mitchell reads portions of the transcript

10:17 Court rules on Motion-GRANT in PART; DENIED in PART
Denied as to claims 1 and 3; Granted as to claim 2; The case will go to the jury on claims 1 and 3

10:25 Plaintiffs' objection to ORDER on MOTION on the record
Defense counsel wishes the motion to be treated as if filed both at the end of plaintiff's evidence and the conclusion of all evidence

Court will treat motion for directed verdict as filed at conclusion of plaintiff's evidence and at the conclusion of all evidence; with will remaining the same

10:25 Jury Re-enters

10:25 Defense reads into the record his stipulation
Defense rests

10:26 Jury excused- RE: Conference with counsel

Court provides verdict forms to counsel;
Plaintiff's argues in favor of verdict form #29 which will separates medical award from pain and suffering award and lumps together award for plaintiffs

Defense has no objection

10:45 Court in recess - Re-draft of verdict form and Jury Charges

11:05 Court Reconvened
No Objections to Instructions to the Jury
No Objections to Verdict Forms

11:06 Defendant objects to plaintiff's Instruction #5
Court replied #5 Not Included in Instructions
Objection to #18 of Plaintiff's Instructions; Objection Withdrawn
Objection to #20 of Plaintiff's Instructions Regarding Loss of future earning - OVERRULED
Plaintiff has no objections to Defenses Instructions

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11:15 Jury Re-enters

11:16 Plaintiff Begins closing arguments (5 minutes)

11:22 Defendant Gives closing arguments (30 Minutes)

11:50 Plaintiffs' Rebuttal (25 Minutes)

12:15 Court gives jury option of continuing the proceedings or lunch; Jurors chose to take lunch
Court recessed for lunch; Court to Reconvene at 1:30 p.m.

1:30 Court Reconvened; Jury charged

2:05 Jury Begins Deliberations

3:00 Question from the Jury
Court informs counsel of question and suggests she read portions of jury instructions that relate to said questions; Counsel agrees

3:05 Jury Re-enters Courtroom;
Court re-read a portion of the Jury Instructions;
Jury released for further deliberations

3:16 Court Reconvened
Jury Re-enters
VERDICT RENDERED in favor of defendant; Jurors not polled

3:20 COURT IN RECESS